

REMARKS

The present filing is responsive to the Office Action.

Examiner Interview Summary

Applicant appreciates the opportunity of an examiner interview on October 30, 2008, and the courtesy extended by the Examiner at the interview. While no agreement was reached at the interview, Applicant believes the Examiner was receptive to distinctions of the invention over the cited prior art. The Examiner suggested further defining the closed loop process in claim 55 and the barrier to contaminant in claim 71, to clarify the distinctions of the invention from the prior art.

Summary of the Response

Claims 45 and 68 have been amended. Claims 55, and 85-93 have been canceled. New Claims 94-103 have been added. Claims 45-54, 56-84, and 94-103 remain pending in this application. Reexamination and reconsideration of the present application as amended are respectfully requested.

Claim Rejections Under 35 USC 112

Claim 68 is does not comply with the requirements of 35 U.S.C. 112, second paragraph. Applicant amended claim 68 to correct the noted informality.

Claim Rejections Under 35 USC 102

Claims 45-53, 56, 57, 61, 65-67, 77-79, 81, 83 and 84 are rejected under 35 U.S.C. 102(b) as being anticipated by Smith et al. (US 5,893,216). This rejection is respectfully traversed.

Claim 45 has been amended to incorporate the limitations of dependent claim 55. The Examiner recognized that Smith does not anticipate claim 55. Claim 55, however, has been rejected as been obvious over Smith and Cole, which will be addressed below.

Claim Rejections Under 35 USC 103

Claims 54 and 55 are rejected under 35 USC 103(a) as being unpatentable over Smith et al. (US 5,893,216) in view of Cole (US 5,931,014). Claim 58 is rejected under 35 USC 103(a) as being unpatentable over Smith et al. (US 5,893,216) in view of Guasch (US 5,555,643). Claims 59 and 60 are rejected under 35 USC 103(a) as being unpatentable over Smith et al. (US 5,893,216). Claims 62-64 are rejected under 35 USC 103(a) as being unpatentable over Smith et al. (US 5,893,216) in view of Roy (US 5,968,401). Claim 68 is rejected under 35 USC 103(a) as being unpatentable over Smith et al. (US 5,893,216) in view of Croan et al. (US 5,356,624). Claims 69-72, 75, 76, 80 and 82 are rejected under 35 USC 103(a) as being unpatentable over Smith et al. (US 5,893,216) in view of White (EP 0355765). Claims 73 and 74 are rejected under 35 USC 103(a) as being unpatentable over Smith et al. (US 5,893,216) in view of White (EP 0355765) as applied to claims 54-55 and 69-72 above, and further in view of Kourai et al. (US 4,826,924). These rejections are respectfully traversed.

Applicant appreciates the Examiner's suggestion of amending claim 55 to further define the recited closed loop process. Upon further consideration of claim 55, Applicant believes it is not necessary to amend claim 55 in order to distinguish from the cited references.

The Examiner acknowledged that Smith does not teach recirculating air in a closed loop process. The Examiner, however, turned to Cole for the missing teaching. Applicant respectfully submits there is no teaching or motivation to modify the Smith in view of Cole.

Smith is directed to a wall-drying system, which distributes air into a wall to dry the wet areas within the wall. As such, it would not make sense for Smith to recirculate the air with heavy moisture extracted from the inside of the wall, back to the inside of the wall. In fact, according to the disclosure of Smith, the system includes an air blower 50 blowing air into a wall to be dried, and a vacuum mechanism 55 to draw air from the wall. It specifically discloses that the drawn air is simply routed to ambient pressure, preferably out of the building. (See, Smith at column 3, line 39-41.) Accordingly, Smith in effect teaches away from recirculating wet air drawn from the wall cavity back to the wall cavity in a closed loop process. To do so otherwise would frustrate the intended wall-drying objective of Smith. Therefore, it would not have been obvious to modify the Smith wall-drying system with a closed loop recirculation process, regardless of the teachings of Cole.

Further, it would not be proper to rely on Cole to modify Smith. On the outset, Cole is non-analogous art to Smith and to the present invention. Cole is directed to ductwork purification system having a built-in recirculation configuration for cleaning the ductwork of a refrigeration system for food items. Smith is directed to an add-on wall-drying system for drying moisture-laden areas inside a wall. The present invention is directed to a method of abating contamination present with a cavity of an existing closed structure using a process involving add-

on suction device and conduits. In the context of the invention it is unreasonable to refer to the cleaning of a ductwork in a refrigeration system recirculation is a built-in part of the system, to be analogous to contamination abatement method of the present invention, or the add-on wall-drying system of Smith. In this case, Cole is neither in the field of Applicant's endeavor (i.e., contamination abatement using an add-on process), nor reasonably pertinent to the particular problem with which the Applicant was concerned (i.e., how to abate contaminants within a cavity of an existing closed structure). Similarly, Cole is neither in the field of Smith's endeavor (i.e., wall-drying using an add-on system), nor reasonably pertinent to the particular problem with which the Smith was concerned (i.e., how to dry the inside of a wall using an add-on system). Smith and Cole, and the present invention and Cole are therefore in diverse fields and have different design objectives, different issues to be overcome, and different solutions to their respective issues. In fact, according to the face of the patent, the patent classifications of Cole and Smith are completely different, without absolutely no overlap in either main classes or subclasses.

Accordingly, Cole is non-analogous art, which should be excluded from consideration as prior art relevant to the present invention. Hence, one reading Smith would not be made aware of the need to also read Cole to arrive at the present invention. It would not occur to one skill in the art to consider Smith and Cole together when creating the present invention, without the benefit of the disclosure of the present invention.

Further, there is no suggestion, teaching, motivation, or any apparent reason to combine Smith and Cole in the first place. As noted earlier, Smith is directed to an add-on wall drying system, which pumps air into the wall and evacuates moist air from the wall and dumping the moist air into ambient outside of the building. On the other hand, Cole is directed to

incorporating into a refrigeration system a built-in ductwork cleaning configuration, including recirculation of air through the ductwork. The present invention is instead directed to the recirculation of air in a closed loop process in the process of contaminant abatement. The Examiner has not provided an adequate explanation why it would be prima facie obvious to modify Smith with the air recirculation teaching of Cole. One skill in the art would not have combined the references in the manner suggested only by the Examiner. There is no disclosure of the incentive to modify Smith with the air recirculation teaching of Cole, as recirculation of moist air in Smith would not be effective in drying the wall, which is the specific objective of Smith. There is therefore a lack of design incentives and no showing that one of ordinary skill in relevant art would modify Smith to be modified by Cole.

To find otherwise would require hindsight bias, which has been cautioned by the Supreme Court: “A fact finder should be aware, of course, of the distortion caused by hindsight bias and must be cautious of arguments reliant upon *ex post* reasoning.”; KSR v. Teleflex, 127 S. Ct. 1727, 1741 (2007). The Examiner has not given articulated reason for combination or modification of art applied in the rejection, other than a conclusory statement that user registration is required to allow users to test a current version prior to deciding on purchasing the full version. The Supreme Court re-emphasized that conclusory statements do not sustain an obvious rejection and instead: there must be articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *Id.*, at 1741. And from the Memo of May 3, 2007, to the PTO Tech. Center Dirs.: “Therefore, in formulating a rejection under 35 U.S.C. 103(a) based upon a combination of prior art elements it remains necessary to identify the reasons why a person of ordinary skill in the art would have combined the prior art elements in the manner claimed.”

In view of the foregoing, Applicant respectfully submits that the present invention defined by claim 55 (now independent claim 45) is not rendered obvious by Smith and Cole. Claim 45 should therefore be patentable over Smith and Cole, and all claims dependent therefrom should likewise be patentable. Further, the dependent claims include additional limitations that further distinguish from the cited references.

New claims 94 to 98 have been added to depend from claim 45. New dependent claim 94 further recites coupling an air suction device exterior of the structure to create a closed loop air flow through the cavity. Smith and Cole in combination does not teach the step of coupling an air suction device exterior of the structure to create a closed loop air flow. Smith does not teach closed loop air flow, and Cole does not teach the step of coupling an add-on external air suction device to its ductwork.

New dependent claim 95 further recites the air suction device is coupled to the structure by external conduits coupling flow input and output of the suction device to the structure to create the closed loop air flow through the cavity, recirculating air evacuated from the cavity back into the cavity. Neither Smith nor Cole teaches the recited coupling of add-on conduits to create the closed loop recirculation to the structure.

New dependent claim 96 further recites the external conduits are coupled to the structure by creating holes in an external surface of the structure, and coupling the external conduits to the holes. Cole clearly does not teach this process step.

New dependent claim 97 further the structure having the cavity is an existing closed structure to be abated. Cole is directed to a refrigeration system, which includes a built-in recirculation ductwork, which does not anticipate the add-on conduits and suction device coupled to the existing closed structure to be abated.

New dependent claim 98 recites the external conduits are removed after abatement of contamination. Cole's built-in recirculation ductwork remains with the refrigeration system after cleaning of the ductwork.

b. Claim 71

New independent claim 99 essentially corresponds to claim 71 rewritten in independent form to incorporate the limitations of independent claim 45 and intervening claim 69, and further recites that the lock-down material provides a barrier against penetration of contaminants through the barrier to and from at least a portion of the contaminated surface of the structure enclosing the cavity.

The Examiner acknowledged that Smith does not teach the recited introduction of a lock-down material. The Examiner, however, turned to White for the missing teaching. Applicant respectfully submits the combination of Smith and White would not obtain the present invention, and there is no teaching or motivation to modify the Smith in view of White in the first place.

White does not teach providing the recited barrier against penetration of contaminants through the barrier to and from the contaminated surface. White is directed to bounding antimicrobials to kill organisms on contact and continue to kill organisms without being diffused or leached from the surface. "Thus, the bound antimicrobial leaves behind an effective level of active ingredient and is able to control a broad spectrum of microorganisms ..." (See, White at page 2, lines 15-23. The antimicrobial agent disclosed in White imparts a durable, wash resistant, broad spectrum biostatic surface antimicrobial finish to a substrate. (See, White at page 4, lines 10-25.) As such, from a reasonable reading of White, the disclosed antimicrobial is

a durable biostatic surface antimicrobial finish that is effective to kill organisms. However, the antimicrobial finish does not “lock down” contaminants in the context of the present invention. White is however silent with respect to providing a barrier against penetration of contaminants through the barrier to and from the contaminated surface, as required by claim 99. Consequently, the combination of Smith and White would not obtain the present invention.

Further, there is no suggestion, teaching, motivation, or any apparent reason to combine Smith and White in the first place. As noted earlier, Smith is directed to an add-on wall drying system, which pumps air into the wall and evacuates moist air from the wall and dumping the moist air into ambient outside of the building. On the other hand, White is directed to antimicrobial finish. The present invention is instead directed to the introducing a lock down material as part of a process for contaminant abatement in a structure. The Examiner has not provided an adequate explanation why it would be prima facie obvious to simply modify Smith with the antimicrobial finish teaching of White, to provide contaminant abatement, and in particular providing a barrier to contaminant penetration through the barrier to and from the contaminated surface. One skill in the art would not have combined the references in the manner suggested only by the Examiner. To find otherwise would require hindsight bias, which has been cautioned by the Supreme Court.

Accordingly, claim 99 is not rendered obvious by Smith and White.

CONCLUSION

In view of all the foregoing, Applicant submits that the claims pending in this application are patentable over the references of record and are in condition for allowance. Such action at an early date is earnestly solicited. **The Examiner is invited to call the undersigned**

representative to discuss any outstanding issues that may not have been adequately addressed in this response.

The Assistant Commissioner is hereby authorized to charge any additional fees under 37 C.F.R. §§ 1.16 and 1.17 that may be required by this transmittal and associated documents, or to credit any overpayment to **Deposit Account No. 501288** referencing the attorney docket number of this application.

Respectfully submitted,

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/Wen Liu; Reg. No. 32,822/

Wen Liu
Registration No. 32,822

LIU & LIU
444 S. Flower Street; Suite 1750
Los Angeles, California 90071
Telephone: (213) 830-5743
Facsimile: (213) 830-5741
Email: wliu@liulaw.com